S.B. CIVIL WRIT PETITION NO.1409/2005

LOONI DEVI

VS

ADDL. DISTRICT JUDGE BARMER & ORS.

DATE OF ORDER: 14.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr.P.C.Purohit, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 11.1.2005 by which the petitioner's application filed under Order 1 Rule 10 CPC for being impleaded as party in the suit for specific performance, which was filed by the respondent Tulsidas against Smt. Sushila was dismissed by the trial court.

According to petitioner, the petitioner is also the co-sharer in the property in which Tulsidas is alleging that Smt.Sushila has agreed to sell the entire property to Tulsidas. According to learned counsel for the petitioner, in case, any decree will be passed in favour of Tulsidas and against Smt. Sushila, it will effect the petitioner's right or at least it will

result into multiplicity of the proceedings as the petitioner will have to file a suit to protect his rights simply because of any decree if passed in the suit of Tulsidas or he may have to submit objections in the execution petition if decree in the suit of Tulsidas is passed.

It is well settled law that in a suit for specific performance of contract even person claiming himself to be the sole or absolute owner of the property also cannot be impleaded as party because of the fact that the scope in the suit for specific performance of contract is limited one to examine whether the plaintiff is entitled to seek specific performance of contract irrespective of the fact of the title of the seller, therefore, in this situation, the petitioner who is claiming herself to be co-sharer of the property, is not at all necessary or even proper party.

Therefore, I do not find any merit in the writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-